

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JAMES DEFERIO,**

**Plaintiff,**

**v.**

**ATTORNEY DECLARATION**

**Civil Action No.: 5:16-CV-0361  
(LEK/TWD)**

**CITY OF SYRACUSE; FRANK FOWLER,**

In his official capacity as Chief of Police for the City of Syracuse Police Department, **JOSEPH SWEENEY**, individually and in his official Capacity as Captain for the City of Syracuse Police Department, and **JAMEY LOCASTRO**, individually and in his official capacity as Sergeant for the City of Syracuse Police Department,

**Defendants.**

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TODD M. LONG, pursuant to Section 1746 of Title 28 of the United States Code, under the penalty of perjury, to the best of my knowledge, declares:

1. I am duly admitted to practice law before this Court.
2. I am also an Assistant Corporation Counsel for the City of Syracuse (hereinafter “the City”), and represent in the above-entitled action the CITY OF SYRACUSE (“City”), FRANK FOWLER (“Chief Fowler”) in his official capacity as Chief of Police for the City of Syracuse Police Department, JOSEPH SWEENEY (“Capt. Sweeney”) individual and in his official capacity as Captain for the City of Syracuse Police Department, and JAMEY LOCASTRO (“Sgt. Locastro”) individually and in his official capacity as Sergeant for the City of Syracuse Police Department (collectively “Defendants”).
3. Being sufficiently familiar with the facts and circumstances of this case, this Declaration is made in support of Defendants’ motion, made pursuant to Federal Rule of Civil

Procedure (“FRCP”) 56 for an order granting summary judgment dismissing Plaintiff’s complaint against Defendants in its entirety, with prejudice.

4. Attached as **Exhibit “I”** is a true and accurate copy of an affidavit by Sam White, the Director of Pre-Development for the City of Syracuse’s Department of Neighborhood and Business Development and former Right-of-Way Permit Coordinator for the Central Permit Office (during all relevant times), sworn to on May 24, 2017.

5. Attached as **Exhibit “V”** is a true and accurate copy of an affidavit by Sgt. Locastro, a Syracuse Police Department (“SPD”) Sergeant and named defendant, sworn to on May 25, 2017.

6. Attached as **Exhibit “BB”** is a true and accurate copy of an affidavit by Captain Capt. Sweeny, a Syracuse Police Department (“SPD”) Captain and named defendant, sworn to on May 30, 2017.

7. Attached as **Exhibit “CC”** is a true and accurate copy of an affidavit by Officer Paul Kluge (“Ofc. Kluge”), a Syracuse Police Department (“SPD”) Officer and witness to the permit review process, sworn to on May 25, 2017.

8. Attached as **Exhibit “FF”** is a true and accurate copy of an affidavit by Officer Dennis Burlingame (“Ofc. Burlingame”), a Syracuse Police Department (“SPD”) Officer and witness to incidences described in Plaintiff’s Complaint on June 20, 2015, sworn to on May 25, 2017.

9. Attached as **Exhibit “M”** is a true and accurate copy of a July 5, 2013 City email from the former Administrator of the Citizen Review Board for the City (i.e., Joseph Lipari), and a true and accurate copy of an attachment thereto: “Case Summary Form” with the “Administrator’s Recommendation” detailing allegations made by James Deferio against the City of Syracuse Police Department (“SPD”) allegedly surrounding a May 17, 2013 incident.

10. Attached as **Exhibit “N”** is a true and accurate copy of a SPD Report (i.e., CNYLEADS Report and Narrative Supplement) from an event occurring on October 6, 2011, written in the regular course of business, detailing an incident involving James Deferio.

11. Attached as **Exhibit “W”** are true and accurate copies of correspondences between Plaintiff’s Counsel, Nathan W. Kellum, Esq., with the Center for Religious Expression, and the City of Syracuse former Assistant Corporation Counsel, Joseph R. H. Doyle, Esq., dated September 5, 2014 and October 24, 2014, respectively.

12. Attached as **Exhibit “NN”** is a true and accurate copy of Chapter 1 “General Provisions” of the City of Syracuse’s Revised General Ordinances.

### **PROCEDURAL HISTORY**

13. On March 31, 2016, Plaintiff electronically filed his Verified Complaint (“Complaint”) for the above-captioned action with this Court. *See* Dkt. No. 1.

14. On April 5, 2016, Plaintiff electronically filed a motion for a Preliminary Injunction in the same matter. *See* Dkt. No. 6. Attached to his preliminary injunction, Plaintiff attached videos attesting that they depict the following:

- a. “video recording capturing Deferio’s interaction with Sergeant Locastro on the Festival side of West Kirkpatrick Street on June 21, 2014,” (Dkt. No. 6-1, ¶ D) a true and accurate copy of which is attached hereto, on a DVD medium, pending a request to the Court, as **Exhibit “T”**;
- b. “video recording capturing Deferio’s interaction with Sergeant Locastro on the south side of West Kirkpatrick Street on June 21, 2014,” (Dkt. No. 6-1, ¶ F) a true and accurate copy of which is attached hereto, on a DVD medium, pending a request to the Court, as **Exhibit “U”**;

- c. “video recording capturing Deferio’s interaction with Captain Sweeny on the Festival side of West Kirkpatrick Street on June 20, 2015,” (Dkt. No. 6-1, ¶ K) a true and accurate copy of which is attached hereto, on a DVD medium, pending a request to the Court, as **Exhibit “DD”**;
  - d. “video recording capturing Deferio’s interaction with Captain Sweeny on the south side of West Kirkpatrick Street on June 20, 2015,” (Dkt. No. 6-1, ¶ L) a true and accurate copy of which is attached hereto, on a DVD medium, pending a request to the Court, as **Exhibit “EE”**;
15. On April 25, 2016, Defendants electronically filed their Verified Answer and served it upon Plaintiff by means of electronic service through NDNY CM/ECF. *See* Dkt. No. 12.
16. On May 3, 2016, Defendants electronically filed and served their opposition to Plaintiff’s preliminary injunction. *See* Dkt. Nos. 14, 15, 17-19.
17. On May 9, 2016, Plaintiff filed and served his reply to Defendants’ opposition to Plaintiff’s motion for a preliminary injunction. *See* Dkt. No. 21.
18. On June 8, 2016, the Court reached a decision and order in the matter, granting Plaintiff’s preliminary injunction. *See* Dkt. No. 24.
19. On July 13, 2016, Defendants were in receipt of Plaintiff’s First Set of Interrogatories and Plaintiff’s First Request for Production of Documents and Things, pursuant to FRCP Rules 33 and 34, respectively.
20. On July 15, 2016, Defendants served on Plaintiff by mail their Document Demands pursuant to FRCP Rule 34, as well as two first sets of interrogatories (pursuant to FRCP Rule 33) from both “Joseph Sweeny and Jamey Locastro” and “Frank Fowler and the City of Syracuse,” respectively.

21. On July 20, 2016, mandatory mediation was held between the parties, wherein the case did not settle. *See* Dkt. No. 29 and Case Note for 07/25/2016 by Mediator Gustave J. DiBianco.

22. On August 11, 2016, Defendants served by mail on Plaintiff the first set of interrogatory responses of Chief Fowler, the City, Captain Joseph Sweeny (“Capt. Sweeny”), and Sergeant Jamey Locastro (“Sgt. Locastro”). A true and accurate copy of Chief Fowler’s response to Plaintiff’s First Set of Interrogatories is attached hereto as **Exhibit “HH,”** pp. 20-40 (i.e., Ex. A, thereto). A true and accurate copy of the City’s response to Plaintiff’s First Set of Interrogatories is attached hereto as **Exhibit “II,”** pp. 19-41 (i.e., Ex. A, thereto). A true and accurate copy of the Capt. Sweeny’s response to Plaintiff’s First Set of Interrogatories is attached hereto as **Exhibit “JJ.”** A true and accurate copy of the Sgt. Locastro’s response to Plaintiff’s First Set of Interrogatories is attached hereto as **Exhibit “KK.”**

23. On August 17, 2016, Plaintiff served on Defendants both a copy of Plaintiff’s responses to “Defendants Joseph Sweeny’s and Jamey Locastro’s First Set of Interrogatories” and “Defendants Chief Frank Fowler and City of Syracuse First Set of Interrogatories.” A true and accurate copy of “Plaintiff’s Responses to Defendants Joseph Sweeny’s and Jamey Locastro’s First Set of Interrogatories” is attached hereto as **Exhibit “LL,”** while a true and accurate copy of “Plaintiff’s Responses to Defendants Chief Frank Fowler and City of Syracuse First Set of Interrogatories” is attached hereto as **Exhibit “MM.”**

24. On August 17, 2016, Plaintiff served on Defendants his “Responses to Defendants’ Document Demands,” which include video footage on an attached DVD representing all “recorded statements of any witness or party.” A true and accurate copy of the first video (“Video 4”) from June 20, 2015 is attached hereto as **“Exhibit X,”** as a DVD medium, pending a request to the Court,

which would later be attested to as a video taken by Michelle Deferio on June 20, 2015 at the CNY Pride Festival (*see* Ex. R, pp. 23-25, marked as Ex. Q). A true and accurate copy of the second video (“Video 5”) from June 20, 2015 is attached hereto as **“Exhibit Y,”** as a DVD medium, pending a request to the Court, which would later be attested to as a video taken by Michelle Deferio on June 20, 2015 at the CNY Pride Festival (*see* Ex. R, pp. 23-25, marked as Ex. Q). An additional video was on the DVD provided by Plaintiff, attached hereto as **“Exhibit AA,”** as a DVD medium, pending a request to the Court, labeled as “June 20, 2015 - 2.”

25. On November 17, 2016, Defendants were in receipt of “Plaintiff’s Responses to Defendants’ Request for Admissions – Genuineness of Documents,” pursuant to FRCP Rule 36, regarding the authenticity of public Facebook postings from the public Facebook account of Plaintiff. A true and accurate copy of “Plaintiff’s Responses to Defendants’ Request for Admissions – Genuineness of Documents,” with the disclosed Facebook screenshots of Plaintiff’s public Facebook account (Bates Stamp 0170-0211), is attached hereto as **Exhibit “L.”**

26. Attached as **Exhibit “C”** is a true and accurate copy of the transcript of the first Deposition of Capt. Sweeny, taken on December 20, 2016.

27. Attached as **Exhibit “E”** is a true and accurate copy of the transcript of the first Deposition of Sgt. Locastro, taken on December 20, 2016.

28. Attached as **Exhibit “G”** is a true and accurate copy of the transcript of the first Deposition of Officer Dennis Burlingame (“Ofc. Burlingame”), taken on December 20, 2016.

29. On January 26, 2017, Defendants were in receipt of Syracuse City Court documents relevant to the above-caption matter, which were obtained by Defendants pursuant to an unsealing order. True and accurate copies of these Syracuse City Court documents are attached hereto as **Exhibit “GG,”** which are to be filed under seal, pending a request to the Court, as it contains

documents protected under a Confidentiality Order. *See* Dkt. Nos. 46 & 47.

30. On January 30, 2017, as a result of a Court ruling in the matter (*see* Dkt. No. 42), Chief Fowler and the City served by mail on Plaintiff a responses to “Plaintiff’s Revised Interrogatories.” A true and accurate copy of Chief Fowler’s response to Plaintiff’s Revised Interrogatories is attached hereto as **Exhibit “HH.”** A true and accurate copy of the City’s response to Plaintiff’s Revised Interrogatories is attached hereto as **Exhibit “II.”**

31. Attached as **Exhibit “J”** is a true and accurate copy of the transcript of the Deposition of Plaintiff, taken on March 21, 2017.

32. Attached as **Exhibit “K”** are true and accurate copies of notecards produced by Plaintiff as a result of his deposition testimony, some of which he used to assist him in his deposition (*see* Ex. J, pp. 235-240), that contains notes Plaintiff alleges that he takes in the regular course of attending events (*see id.*, p. 27, ll. 13-17). Plaintiff disclosed these notecards to Defendants by e-mail on March 23, 2013.

33. Attached as **Exhibit “D”** is a true and accurate copy of the transcript of the “Volume II” of the Deposition of Capt. Sweeny, taken on March 22, 2017.

34. Attached as **Exhibit “F”** is a true and accurate copy of the transcript of the “Volume II” of the Deposition of Sgt. Locastro, taken on March 22, 2017.

35. Attached as **Exhibit “H”** is a true and accurate copy of the transcript of the “Volume II” of the Deposition of SPD Officer Dennis Burlingame, taken on March 22, 2017, which is to be filed under seal, pending a request to the Court, as it contains documents protected under a Confidentiality Order. *See* Dkt. Nos. 46 & 47.

36. In response to a Notice to Produce by Defendants from Plaintiff’s deposition, on April 24, 2017, Plaintiff served by mail on Defendants letter correspondences between the City and

Plaintiff's Counsel (i.e., Alliance Defense Fund) dated June 2, 2009 and July 17, 2009. A true and accurate copy of Plaintiff's response to Defendant's Notice to Produce with the letters attached thereto is attached hereto as **Exhibit "O."**

37. On April 24, 2017, Defendants served on Plaintiff "Defendants' Expert Disclosure," which had attached to it the Export Report of Robert N. Andres, CSP, CPE, FACFEI, INCE, entitled "Results of Field Testing of portable sound system." A true and accurate copy of these documents, as well as Mr. Andres' curriculum vitae, is attached hereto as **Exhibit "S."**

38. Attached as **Exhibit "A"** is a true and accurate copy of the transcript of the Deposition of Christopher Shepherd, taken on May 2, 2017.

39. Attached as **Exhibit "B"** is a true and accurate copy of the transcript of the Deposition of Barrie Gewanter, taken on May 2, 2017.

40. Attached as **Exhibit "Q"** is a true and accurate copy of the transcript of the first part of the Deposition of Michelle Deferio, taken on May 2, 2017.

41. Attached as **Exhibit "R"** is a true and accurate copy of the transcript of the second part of the Deposition of Michelle Deferio, taken on May 12, 2017.

42. Attached as **Exhibit "P"** are true and accurate copies of documents disclosed by Plaintiff to Defendants related to Plaintiff's prior alleged arrests and criminal proceedings (*see* Ex. O, pp. 1-3, Request Nos. 1, 2).

43. On June 19, 2017, Defendants were in receipt of a video from Plaintiff indicating that it was taken on June 20, 2015 that was entitled "Syracuse Pride Festival Organizer tries to remove Jim and then [omitted] walks up - June 20, 2015." A true and accurate copy of this June 20, 2015 video is attached hereto, on a DVD medium, pending a request to the Court, as **Exhibit "Z."**

44. Therefore, based upon the Defendants' Statement of Material Facts, the exhibits



attached to this Declaration, and Defendants' Memorandum of Law, Defendants respectfully request that this Court grant Defendants' motion for summary judgment.

Pursuant to Section 1746 of Title 28 of the United States Code, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 30, 2017

/s/  
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Todd M. Long, Esq.  
Assistant Corporation Counsel  
Federal Bar Roll No. 519301